

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	

**REPLY COMMENTS OF THE MONTANA UNIVERSAL SERVICE
TASKFORCE (MUST)**

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SUMMARY

The growth in the universal service fund, primarily as a result of the designation of wireless CETCs, is explosive and threatens the continued viability of the fund. Part of the response to this growth may be to broaden the base from which contributions are made, but such action addresses only the “supply” side of the equation. The “demand” on the fund must also be addressed by ensuring that CETCs are funded based on their own costs, establishing a more comprehensive and complete definition of supported services, and ensuring that those providers that are designated ETCs are capable of delivering at a minimum the service quality to which rural subscribers have become accustomed from their incumbent ETC. Further, the regulators making ETC designations should take into account whether the technology platform utilized for the provision of universal service can also be used to provide advanced services.

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I. INTRODUCTION

As noted in our initial comments, MUST is an alliance of incumbent rural telephone companies operating primarily in Montana but also in parts of North Dakota, Wyoming and Nevada.¹ Our members range in size from approximately 1,650 access lines to approximately 20,000 access lines. All of our members are either customer-owned or wholly-owned subsidiaries of customer-owned telephone companies. Therefore, our customers elect representatives from among themselves to serve on our Boards of Directors. These Boards in turn determine our policies with respect to the nature, quality and prices of our services. In our view, this kind of organizational structure makes us far more customer-focused than most other companies. Not surprisingly, therefore, our primary concern in this matter is to ensure that the nature, quality and prices for basic and advanced telecommunications services provided to customers in our rural service areas remain reasonably comparable to those in urban

¹ The members of MUST are: Blackfoot Telephone Cooperative, CC Communications, Central Montana Communications, Interbel Telephone Cooperative, Nemont Telephone Cooperative, Northern Telephone Cooperative, Project Telephone Company, 3 Rivers Telephone Cooperative, Triangle Telephone Cooperative Association and Valley Telecommunications.

areas. Fortunately for us, this also appears to be one of Congress' primary concerns when it passed the Telecommunications Act of 1996.²

While the FCC, based upon recommendations of the Federal-State Joint Board on Universal Service, has promulgated a list of basic "supported services," Congress expressly established in the universal service section of the 1996 Act the policy that advanced services should also be universally available.³ In the service areas we serve, we are most often the only providers with technology platforms capable of offering basic telephone service at the level of quality to which consumers have become accustomed and the advanced services that are available to consumers in more urban areas of the country. Logic thus requires that we support universal service rules and policies that facilitate both the ability of rural consumers to continue to receive basic and advanced services and our ability to continue to provide those services. The same logic requires that we oppose rules and policies that threaten these ends. Certain of the FCC's current rules and policies as identified in the Joint Board's notice fall into this latter category, and we will address them in the course of these reply comments.

² 47 U.S.C. § 254 (b)(2): "Access to advanced telecommunications and information services should be provided in all regions of the Nation." and 47 U.S.C. § 254 (b)(3): "Consumers in all regions of the Nation, including low income consumers and those in rural, insular and high-cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas. [emphasis added]

II. STATE OF THE MARKETPLACE AND THE SCOPE OF UNIVERSAL SERVICE SUPPORT

The Growth in the Universal Service Fund Due to the Demand from CETCs is Explosive and Threatens the Viability of the Fund.

There appear to be significant differences among the comments in the perception of how much the recent growth in the universal service fund is due to increased funding for CETCs in general and wireless CETCs in particular. These differences appear to result primarily from picking different time periods with respect to the USAC reports from which the numbers were drawn. Those comments promoting support for wireless CETCs in particular relied upon older data, while those that felt support for wireless CETCs threatened the viability of the fund used newer data and USAC projections. Perhaps predictably, MUST supports the latter methodology. We can see no legitimate alternative to using the most recently available data. USAC projects that CETCs will receive support for the third quarter of 2003 in the amount of \$45.5 million (or an annualized amount of \$182 million), of which \$44 million (or an annualized amount of \$176 million) is projected to be distributed to wireless CETCs.

The growth in support for wireless CETCs can only be characterized as explosive when compared to the support they received only two years ago. This fact raises the issue of whether the growth in support for wireless CETCs threatens the continued viability of the fund as a whole. The recent national summit on universal service funding sponsored by Senators Burns and Dorgan would certainly seem to indicate some degree of Congressional concern respecting the sustainability of the fund's growth.

³ Id.

Some have proposed to extend the viability of the fund by broadening the base from which contributions are made.⁴ There may be merit in such suggestions, but they only address the “supply” side of the equation. The demands on the fund must be limited as well, although (as most comments agreed, albeit for different reasons) not by methods such as limiting support to primary lines, awarding support to the least-cost provider, or by auctioning support. As noted in MUST’s initial comments, each of these proposals threatens the quality of basic service in rural areas and the ability of consumers in such areas to continue to have access to advanced services.⁵ MUST will address some of the means of controlling demand in the next section.

III. METHODOLOGY FOR CALCULATING SUPPORT IN COMPETITIVE STUDY AREAS

The FCC Should Base Support for CETCs on Their Own Costs.

In MUST’s view, a number of steps should be taken to address the demand side of the universal service fund, some of which can be taken by the FCC and some of which must be taken instead by state public utility commissions.⁶ Other actions may be required by Congress or State Legislatures, but at a minimum the Joint Board and the FCC should encourage these legislative bodies to give proper authority to their state

⁴ Suggestions include assessing the intrastate revenues of telecommunications providers, assessing providers of Internet telephony, and/or eliminating the “safe harbor” for wireless carriers and requiring them to contribute based on their actual interstate revenues, among others.

⁵ SEE MUST’s initial comments, pages 33-34 and page 36.

⁶ If controlling the size of the fund were truly a priority the FCC should, for example, rescind its statutorily indefensible and procedurally questionable Declaratory Ruling with respect to South Dakota, dealing with the so-called “chicken or the egg” determination of whether a competitor must provide service throughout the service area of a rural telephone company as a prerequisite for ETC designation. The FCC should also comply with the provisions of the Act by seeking the consent of all states involved when changing the boundaries of a study area for the purposes of ETC designation when the incumbent’s study area crosses state boundaries. States that have not done so in the past should engage in a more comprehensive review of the public interest criteria when designating multiple ETCs in the service areas of rural telephone

public utility commissions to ensure that CETCs meet appropriate service quality standards.⁷

For the purposes of this proceeding, the FCC should eliminate the so-called “identical support” rule, by which CETCs receive support based on the incumbent’s costs. This rule results in a distortion of the marketplace and unfair competition. MUST is not, at this time, prepared to suggest whether a CETC’s support should be based on “embedded” costs or “forward-looking” costs. However, it is clear to us that where CETCs meet the statutory criteria for ETC designation, they should receive support based on their own costs. Wireline and wireless providers, in particular, have significantly different cost structures and deliver services with significantly different functionalities and quality of service. For this reason, Sprint’s claim that providing different levels of support to different firms punishes the competitor for being efficient should be rejected because the argument assumes that the services of the competitor and the incumbent are fungible.⁸ Providing support to disparate networks with significantly different functionalities and quality of service, based on the cost structure of one of those networks (and the one that coincidentally has generally the greater functionality and quality of service) is economically irrational and not competitively neutral.

companies and should require cost reporting requirements of CETCs that are at least as stringent as the reporting and audit process to which incumbent rural telephone companies are subject.

⁷ For example, the Joint Board has indicated that states may impose service quality standards for CETCs and therefore such standards are unnecessary in FCC rules. However, many state public utility commissions lack legislative authority to impose such standards over certain classes of providers, such as wireless providers. The Joint Board and the FCC should encourage states to grant their public utility commissions such authority so they have tools they need to ensure that the designation of multiple ETCs in the service areas of rural telephone companies does not result in degradation of service quality.

⁸ Sprint’s comments at page 11.

IV. PROCESS FOR DESIGNATING ETCs

States do not Need More Guidance or Models from the FCC. They Need the FCC to Reform the Rules on Portability of Support, a More Complete Definition of Supported Services, and the Authority to Impose Service Quality Standards and Reporting Requirements on ETCs and CETCs Alike.

The States do not need guidance from the FCC on how to process ETC designations, nor do they need a model of what constitutes the public interest. The States have two primary problems. First, the FCC's requirement that support be portable based on the incumbent's costs inappropriately forces states to make a "yes or no" decision on ETC designation, knowing that "yes" means that the competitor (especially in the case of a wireless provider) may receive a windfall that distorts the market and that "no" means that subscribers are denied the benefits of competition. FCC action that requires support to be based on the competitive provider's own costs would help alleviate this problem.

The second problem the states have is that the definition of supported services is at best incomplete. For example, a requirement that an ETC applicant provide voice grade service is incomplete when that requirement says nothing about standards for network congestion or reliability, how service disruptions are to be remedied, or what kind of customer service support is available in the event the customer is dissatisfied with the quality of service. Either the definition should be modified to provide much more detail (and the benchmark should be the level of service to which most rural subscribers have already become accustomed from their incumbent provider) or the Joint Board and the FCC should encourage state Legislatures to give public utility commissions the authority to adopt service quality standards for providers that are not currently subject to the jurisdiction of those commissions. Further, the FCC should clarify that such actions

do not constitute a barrier to entry or impermissible regulation of the rates of wireless providers.

V. CONCLUSION

The long-term viability of the Universal Service Fund is currently threatened by explosive growth in the funding of CETCs, and wireless CETCs in particular. At the same time, the incomplete definition of supported services that must be provided by a CETC, coupled with the portability of support to the CETC based on the incumbent's costs, threatens to degrade the quality of service to which rural subscribers across the country have become accustomed. MUST is greatly concerned that the promotion of competition in rural areas is being pursued at the FCC at the expense of the universal service principles established by Congress. MUST is further concerned that the third pillar of the Telecommunications Act, the universal deployment of advanced telecommunications and information services, is being ignored insofar as universal service support is being so readily provided to carriers with technology platforms that are incapable (at least in the foreseeable future) of providing such services. We are convinced that Congress' primary goal for rural areas was that basic and advanced services be available at affordable rates. We do not believe that Congress intended the FCC to establish rules to promote competition in rural areas at the expense of that primary goal.

RESPECTFULLY SUBMITTED This 3rd Day of June 2003

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